

APPEAL NO. 010283

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on December 11, 2000. The hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 9th and 10th quarters. The claimant appealed, contending that the medical evidence showed he had a total inability to work in any capacity. The respondent (carrier) responded, urging affirmance.

DECISION

Affirmed.

Sections 408.142 and 408.143 set out the statutory requirements for entitlement to SIBs. At issue in this case is whether the claimant made the requisite good faith effort to obtain employment commensurate with his ability to work. The hearing officer's determination that the claimant's unemployment during the qualifying periods for the 9th and 10th SIBs quarters was a direct result of the claimant's impairment from the compensable injury has not been appealed and will not be addressed further.

The claimant asserts that he is entitled to SIBs for the 9th and 10th quarters based on no ability to work. The claimant stipulates that he made no effort to seek employment during the qualifying periods.

Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102(d)(4) (Rule 130.102(d)(4)) provides that:

[a]n injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee: . . . (4) has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work[.]

The Appeals Panel has stated that all three elements of Rule 130.102(d)(4) must be satisfied. See, e.g., Texas Workers' Compensation Commission Appeal No. 001619, decided August 21, 2000.

The claimant testified that he was unable to perform any type of work in any capacity. However, there was evidence from medical personnel which stated that he could perform light-duty work. There was also a videotape of the claimant carrying bags of groceries, picking up a child, and dragging an empty 35-gallon trash can that was on coasters.

Regarding the third element, the hearing officer determined that there is “medical evidence from several doctors including [Dr. P], which finds Claimant has ability to perform at least part-time sedentary work.” We are satisfied that the hearing officer’s findings are supported by the evidence and that the claimant has not met the requirements of Rule 130.102(d)(4).

Accordingly, the hearing officer's decision and order are affirmed.

Thomas A. Knapp
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Elaine M. Chaney
Appeals Judge